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No. .....

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS AND TELEVISION ENGINEERS OF THE MOTION PICTURE AND TELEVISION INDUSTRIES, LOCAL 695,

Petitioners,

VS.

MOTION PICTURE & VIDEOTAPE EDITORS GUILD, LOCAL 776, IATSE; INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA; INTERNATIONAL PHOTOGRAPHERS UNION, LOCAL 659,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

DOES THIS COURT'S DECISION IN "*JOURNEYMEN*" REQUIRE THAT NATIONAL LABOR POLICY SUPPLANT THE STATE AND THE FEDERAL COMMON LAW OF CONTRACTS?

PARTIES TO THIS PROCEDURE

— International Sound Technicians, Cinetechnicians and Television Engineers of the Motion Picture and Television Industries, Local 695 ("Local 695" herein, Petitioner)

— Motion Picture and Videotape Editors Guild, Local 776 ("Local 776" herein)

— International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada ("IATSE" herein)

— International Camerapersons Union, Local 659 ("Local 659" herein)

The following persons are the principal officers of each of the respective parties to this proceeding:

— James A. Osburn, Executive Director of Local 695;

— Ron Kutak, Executive Director of Local 776;

— Walter F. Diehl, International President of IATSE;

— Doug Adam, Executive Director of Local 659.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATEMENT OF JURISDICTION BY SUPREME COURT

Judgment Sought To Be Reviewed

This Petition is from a decision of the Ninth Circuit Court of Appeals which, after reconsideration and amendment, was filed on December 31, 1986. (9th Circuit No.

85-6559.) A copy of said decision is at pages A1-7 of Appendix A and the Order following reconsideration is Appendix B.

Extension Within Which To File Petition

An extension of time to file this Petition for Writ of Certiorari was granted by Associate Justice Sandra Day O'Connor on March 27, 1987, to and including April 28, 1987.

Statutory Grounds Of Jurisdiction

The statutory provision believed to confer upon the Supreme Court jurisdiction to review the decision in question by writ of certiorari is contained in 28 U.S.C. § 1254(1). In addition, the case itself arises under § 301 of the Labor Management Relations Act (29 U.S.C. § 185(a)) and is both an action arising under an Act of Congress regulating commerce and an action arising under the laws of the United States.[1]

Statement Of The Case

The motion picture business in Hollywood has a unique collective bargaining structure. The major producers bargain under the aegis of the Alliance of Motion Picture and Television Producers. The craft unions bargain under the aegis of their parent international, IATSE.

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[1]The federal law involved in this case is § 301(a) of the Labor Management Relations Act:

> "Suits for violation of contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

There are twenty-four such local unions, one existing for each of the traditional *film industry* crafts. This case involves three such studio craft locals: 659 which is the camera local, 695 which is the sound and electronic technicians' local, and 776 which is the editors' local. The dispute centers on whether the cumbersome bargaining structure of the *film* industry should be superimposed on the rapidly evolving electronics (videotape) industry.

The Editors Local (Local 776) filed the tort suit below claiming money damages because the Sound and Technicians Local claimed for its members the historical and contractual right to do certain work called "Technical Directing." This work, plaintiff said, is editing of videotape and therefore belonged to editors based on film industry standards.

In its answer and counterclaim, Local 695 asserted that the procrustean film structure was irrelevant to videotape; that the International President had urged the locals to settle videotape jurisdiction by negotiation and agreement among themselves highlighting employee interchangeability rather than rigorous craft jurisdiction. Local 695's answer and counterclaim incorporated a written agreement ("The 1973 Jurisdictional Agreement") allocating electronics work along functional rather than traditional lines. This agreement had been negotiated by Local 695 with the camera local, reduced to writing, executed by the International President, endorsed by the International's General Executive Board, and approved by the International Convention. The counterclaim of Local 695 sought a judicial declaration that the 1973 Jurisdictional Agreement was valid, subsisting, and enforceable.

A new International President had decided to carve up Hollywood videotape jurisdiction along more conven-

tional lines and a great measure of chaos ensued. In this lawsuit, Local 776 urged that the International President was constitutionally free to do whatever he wanted; Local 695 urged that his power was limited by valid contractual obligations.

The District Court granted Summary Judgment against the cross-complainant for failure to exhaust internal union remedies. The Ninth Circuit did not even discuss that ground but ruled that national labor policy gave an international union great discretion in such matters and, bowing to such "deference," refused to consider whether this International was also subject to common law obligations of contract.

ARGUMENT

THE NINTH CIRCUIT HAS APPLIED PRINCIPLES OF FEDERAL LABOR LAW TO AN ACTION FOR BREACH OF CONTRACT WITHOUT ANY FEDERAL INTEREST REQUIRING SUCH ACTION.

Petitioner sought in the court below a determination that a written contract between it, a sister local, and the parent union remained valid, subsisting, and enforceable. It sought this determination by way of a compulsory counterclaim. The Ninth Circuit declined to consider the binding effect of the contract or its legality or its duration but instead determined that national labor policy permits parent unions to ignore such contractual obligations. Its action seems contrary to this Court's decision in *United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry v. Local 334, United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry, etc.*, 452 U.S. 615, 101 S.Ct. 2546, 69 L.Ed.2d 280 (1981) (the "*Journeymen*" case), and requires that this court settle the question of what law

applies to § 301(a) lawsuits alleging breach of (non-collective bargaining) contracts.

In *Journeymen*, this Court held that federal substantive law governed § 301(a) suits between labor unions. The opinions in that case clearly address the substantive law of contracts but the decision of the Ninth Circuit here applies federal labor principles in such a way as to supplant contract law entirely.

In *Journeymen*, the Court did not find it necessary to determine the question which is at the heart of this controversy.

> "We need not decide today what substantive law is to be applied in § 301(a) cases involving union constitutions. It is enough to observe that the substantive law to apply 'is federal law which the court must fashion from the policy of our national labor laws' [Citation.] Whether the source of that federal law will be state law . . . or other principles can be left to another case." 452 U.S. at 627.

It has been suggested that the *Journeymen* opinion "hints" that "in suits between two labor unions, federal common law might consist entirely of incorporated state law." Goldberg-Ambrose, *The Protective Jurisdiction of the Federal Courts*, 30 U.C.L.A. L.Rev. 542 (1983).

The decision in the *Journeymen* case, on remand, failed to address the question of whether state or federal law was applicable and instead borrowed a legal standard from the Landrum-Griffin Act. (*Local 334 v. United Association of Journeymen*, 669 F.2d 129 [3d Cir., 1982].)

Here the Ninth Circuit has done much the same but even more broadly. It is apparent that the court credited *no* substantive contract law. Rather, it gave conclusive weight to what is either a maxim of construction or a

quasi-presumption: that a parent union is virtually unassailable as to its internal affairs; that such unassailability relieves it of contractual obligations. This conclusion it bottomed on *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967). *Allis-Chalmers*, of course, dealt with the wide authority of the union *in the collective bargaining relationship* but presaged, for Justice White, a doubt about the enforceability of "every conceivable internal union rule. . . . There may well be some internal union rules which on their face are wholly invalid and unenforceable." *NLRB v. Allis-Chalmers, supra*, 388 U.S. at 198-199. What about union conduct that breaches a long-standing written agreement? This case reaches that point.

The Circuit Court noted, as though in passing, Local 695's contention "that the 1973 [Jurisdictional] Agreement was never properly rescinded and is therefore still binding upon the parties involved." (Opinion, Appendix A, page A-3.) That line goes nowhere. The concept never surfaces again in the opinion: it is swallowed by deference to the superior competence of a labor union in such matters.

Local 695 was claiming the benefit of common law as to the formation and rescission of contracts. Its contention in this regard is not rooted in the arcane contractual interpretation of some California cow County:

> "[R]escission means a mutual Agreement by the parties to an existing contract to discharge and terminate their duties under it." 5A Corbin on Contracts (1964 edition) § 1236, p. 533. Cf. *Restatement of Contracts*, 2d § 283, comment a.

Section 1689 of the Civil Code of the State of California provides: "(a) A contract may be rescinded if all the

parties thereto consent." [It also provides for unilateral rescission under circumstances never mentioned by moving parties in the subject motion for summary judgment.]

The federal law of contracts is guided by general principles that have evolved at common law. *United States v. Seckinger*, 397 U.S. 203, 210, 90 S.Ct. 880; 25 L.Ed.2d 224 (1970). Federal contract law, even viewed amid a comprehensive substantive statutory scheme, recognizes the common law concept of rescission. *See: Johns Hopkins University v. Hutton*, 488 F.2d 912, 917 (4th Cir., 1973, cert. denied (1974), 416 U.S. 916, 94 S.Ct. 1622, 40 L.Ed. 118) dealing with the Securities Act of 1933.

Petitioner contends that *Journeymen* promised the enforcement of some law dealing with contracts: state law, federal law, federal law incorporating state law, something. It did not authorize the subversion of all substantive law to perceived labor *policy*.

The contract we are dealing with in this case is a simple one, drafted by laymen, to accomplish a common purpose among themselves and to put an end to instability in the multi-employer bargaining unit. (Appendix E, pages E-1-4.) Insofar as relevant today, the Camera Local (Local 659) cedes audio job functions (including "Technical Directors") to the Sound Local (Local 695); the Sound Local cedes the job title "Video Controller" to the Camera Local; the International Union consents and approves. In its final paragraph the agreement provides:

> "THEREFORE, both Local 659 and Local 695, in the belief that they have fulfilled the wishes of President Walsh and the International, respectfully, (sic) ask of the International Executive Board that the Board signify its concurrence with this Agreement. Upon such concurrence being given, this Agreement

> *shall continue in full force and effect unless rescinded or modified by mutual consent of both Local 695 and Local 659 with the consent and approval of the General Executive Board."*

The Agreement was countersigned by the International President. The approval of the General Executive Board was affixed. The entirety of this lawsuit, complaint and counterclaim arises from the International Union's repudiation of that contract. It has reassigned "Technical Directors" to the Editors Local, recognizing no contractual obligation to the contrary.

Whatever else may be said of the 1973 Agreement, two facts are indisputable in the record below:

1. Local 695 and Local 659 never agreed to any rescission or modification of the Agreement;

2. No party presented any evidence of the Agreement's invalidity as drafted and executed.

The Ninth Circuit knew of this agreement, discussed it at page A-2 of the opinion (Para. 1, *Facts) and acknowledged Local 695's contention "that it was never properly rescinded and is therefore still binding upon the parties involved." (Opinion, page A-3, Facts.)*

The Circuit opinion merely dismisses this contract as subservient to a union's control of its internal affairs.

The Ninth Circuit has an expansive view of *Journeymen* in any event:

> "The Ninth Circuit has construed *Journeymen* as rejecting the significant impact requirement in all contexts including suits brought by individual members based on violations of the union constitution. [Citation.] District courts in post-*Journeymen* decisions in the Eighth and Sixth Circuits have reached

> opposite conclusions as to whether an individual could sue a union under § 185(a)." *Rutledge v. Aluminum, Brick & Clayworkers Int'l. Union*, 737 F.2d 965, 970 (11th Cir., 1984).

In this case, the court goes to the final extreme. A most arrogant breach of contract by the International Union is swept under the rug of "judicial deference." Respectfully, that reasoning could abrogate too much of our law.

The limits of federal labor *law* and the need for its preemptive force are best understood by examining what it meant to regulate and then defining what it meant to leave alone. In that context, petitioner urges, the Ninth Circuit will be seen to have given labor *policy* a supremacy over existing and compatible law — a supremacy never intended by the Congress and never sanctioned by this Court.

> "An appreciation of the true character of the national labor policy expressed in the [NLRA] indicates that in providing a legal framework for union organization, collective bargaining, and the conduct of labor disputes, Congress struck a balance of protection, prohibition and laissez-faire in respect to union organization, collective bargaining and labor disputes that would be upset if a state could also enforce statutes or rules of decision resting upon its views *concerning accommodations of the same interests.*" Cox, *Labor Law Preemption Revisited*, 85 Harv. L.Rev. 1337, 1352 (1972).

Organizing efforts, collective bargaining, strikes and lockouts are governed by supreme federal law in the national interest and state efforts to regulate such matters must give way if inconsistent in letter or spirit.

> "[T]he subject matter of § 301(a) 'is peculiarly one that calls for uniform law.' [Citations.] The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of *collective* agreements . . . [W]e cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over *inconsistent* local rules." *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95, 104-105, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962).

In the instant case, the Ninth Circuit has recognized *one* principle of federal labor law: "avoiding unnecessary interference in the internal affairs of unions." (Opinion, page A-4.) The Circuit, however, did not explain why that principle must supplant conventional contract laws so as to preserve the federal interest.

With the "federal interest" being defined as "achievement of industrial peace" (*Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509, 82 S.Ct. 519, 7 L.Ed.2d 583 (1962)), one supposes circumstances where that objective should negate or suspend normal expectations arising from contract formation. The Ninth Circuit has identified no such circumstance here.

In fact, the record below made a compelling case for the contrary. Evidence was offered to the court, of considerable substantiality, and was unrebutted, that permitting IATSE to breach the 1973 Jurisdictional Agreement would be grossly unsettling to "industrial peace." The Ninth Circuit's opinion here uses a maxim designed to foster labor harmony but employs it in such a way as not only to violate rights of contract, but also to disrupt long-

established, effective, and efficient collective bargaining relationships.

To establish that point, petitioner submitted in opposition to the motion for summary judgment the declaration of Emory Cohen. (Appendix F.) In fair summary of that declaration, Mr. Cohen established that he was a Producer (employer) engaged in the videotape industry and that he had long experience in such capacity. He established that videotape technology made the craft union structure of the motion picture industry inefficient. He declared his opinion that changing the 1973 Jurisdictional Agreement after two decades (in his experience) of efficiency under that concept was designed to fail "and the price of failure will be high both to employees and employers."

Mr. Cohen was convinced of the competence of Local 695 members to work the evolving equipment:

> "8. At present, the sophistication and complexity of videotape equipment is expanding at an exponential rate. Any action which would tend to lower the technical proficiency of the Technical Director, at a time when the complexity of the equipment is in such a dramatic state of flux, cannot be tolerated by the Producer. The Producer will not pay for additional staff to cover for the inadequate knowledge of crew members as a consequence of any union jurisdictional squabble which is blind to reality. If jurisdictional rules are established which increase costs of working with IATSE crews or companies, the result will be obvious: the work will go to non-IATSE crews and companies. Jobs will be lost and companies will be lost." (Appendix F, page F-4.)

Mr. Cohen describes industrial peace based on a common sense contract. The Circuit court would subordinate this balance in favor of the vague politics of an International Union. That is not a correct or good result.

Finally, with regard to Petitioner's failure to pursue intra-union remedies, Petitioner cited below, and discussed in detail, the four-month limitation on Exhaustion rule recognized and applied by this Court in *Clayton v. International Union United Automobile, Aerospace, and Agricultural Implement Workers of America,* 451 U.S. 679, 693, 10 S.Ct. 2088, 68 L.Ed.2d 538, 551 (1981) and *Parks v. International Brotherhood of Electrical Workers,* 314 F.2d 886 (4th Cir. 1963, cert. denied, 372 U.S. 976, 10 L.Ed.2d 142, 83 S.Ct. 1111 (1963)). Nevertheless, the District Court ruled: "Local 695 cites no cases in which the 'four month rule' applied to excuse exhaustion of remedies in a grievance between a member organization and its parent international union." Whatever the lower court's reasoning, Petitioner asserts that the four month cut off applies whether the plaintiff is an individual or a local union. *Local 1219 v. United Brotherhood of Carpenters & Joiners of America,* 493 F.2d 93, 95 (1st Cir., 1974). Refusal to apply such cut off and instead demanding full exhaustion was wrong.

CONCLUSION

The situation is bizarre. Two local unions negotiated a functional work assignment agreement. The Producer is happy with it; it works. That is labor peace; that is industrial stability. Then the Circuit Court, in the name of National Labor Policy, permits subversion of the whole thing. This sort of thing happens when individual perceptions of federal policy supplant the stability of common law. This case asks the Court to rule that common law survives unless contrary to the national interest.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION PICTURE & VIDEOTAPE EDITORS GUILD, LOCAL 776, I.A.T.S.E., and INTERNATIONAL PHOTOGRAPHERS GUILD, LOCAL 659,

Plaintiffs/Counter-Defendants/Appellees,

v.

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS AND TELEVISION ENGINEERS OF THE MOTION PICTURE AND TELEVISION INDUSTRIES, LOCAL 695 ("LOCAL 695"),

Defendants/Counter-Claimants/Appellants.

OPINION

No. 85-6559
D.C. No. CV 84-3120-AHS
Appeal from the United States District Court
for the Central District of California
The Honorable Alicemarie H. Stotler,
District Judge, Presiding
Argued and Submitted August 6, 1986
Pasadena, California

Before: ANDERSON, PREGERSON, and REINHARDT, Circuit Judges. J. BLAINE ANDERSON, Circuit Judge:

Filed: Sept. 26, 1986

Local 776 filed a complaint against Local 695 alleging breach of contract, interference with prospective business advantage, and libel and/or slander. Thereafter, Local

695 filed a counterclaim which, after two amendments, was the subject of a summary judgment motion. The district court granted the motion and Local 695 appeals. The district court based its decision on the failure of Local 695 to exhaust its internal remedies. We have jurisdiction pursuant to 28 U.S.C. § 1291 and the district court's certification under Rule 54(b), Fed. R. Civ. P. We affirm, but on the ground that we decline to interfere with internal union affairs.

FACTS

This case arises out of an intraunion dispute among three local unions, Locals 695, 659, 776, and their parent body, the International Alliance of Theatrical Stage Employees (IATSE or Alliance). In October 1973, Local 695 and Local 659 entered into a written jurisdictional agreement (the Agreement) recognizing that a person working as a "Technical Director" belonged within Local 695 and one working as a "Video Controller" belonged within Local 659. The executon of the Agreement was contingent upon approval by the International President because any jurisdictional agreement could only be enforced by IATSE.

On October 4, 1973, the Agreement was approved and signed by the International President. It was approved that same month by the General Executive Board (the Board) and ratified by the International Convention of IATSE. However, in 1974, the IATSE Convention passed Resolution 51 which provided that the Board would hold hearings on the entire issue of jurisdiction in the videotape field and issue a decision allocating the appropriate jurisdictions among the various local unions. The Board, after holding hearings, made a decision at its 1975 meeting in San Francisco which granted jurisdiction over

technical directors to Local 776 and jurisdiction over video controllers to Local 659. Other classifications of electronic work were awarded to Local 695 and other affected local unions. This action was ratified by the 1976 IATSE Convention.

At the 1978 Convention, the delegates voted to vacate Resolution 51 and return all questions of jurisdiction in the videotape field to the International Union. As a result, the matter of jurisdiction was left to the determination of the International President, subject to appeals to the Board and the Convention. The IATSE, first by the International President, then by action of the Board in March, 1983, and subsequently by the action of the 1984 Convention approving the Board's actions, upheld the previous position of the IATSE that technical directors were within the jurisdiction of Local 776. Local 695, in its second amended counterclaim, disputes these and other actions, contending that the 1973 Agreement was never properly rescinded and is therefore still binding upon the parties involved.

STANDARD OF REVIEW

A review of a district court's grant of summary judgment is *de novo. Nevada v. United States,* 731 F.2d 633, 635 (9th Cir. 1984). In reviewing a grant of summary judgment, the court need only decide whether there are any genuine issues of material fact remaining and whether the substantive law was correctly applied. *Amaro v. Continental Can Co.,* 724 F.2d 747, 749 (9th Cir. 1984).

DISCUSSION

There is a well-established federal policy of avoiding unnecessary interference in the internal affairs of unions. *Financial Institution Employees of America, Local 1182 v.*

NLRB, 752 F.2d 356, 362 (9th Cir. 1984); *cert. granted,* ____ U.S. ____, 105 S.Ct. 2318, 85 L.Ed.2d 838 (1985); *Jou-Jou Designs, Inc., v. International Ladies Garment Workers Union,* 643 F.2d 905, 911 (2d Cir. 1981); *Tincher v. Piasecki,* 520 F.2d 851, 854 (7th Cir. 1975). *See NLRB v. Boeing Co.,* 412 U.S. 67, 93 S.Ct. 1952, 36 L.Ed.2d 752 (1973); *NLRB v. Allis-Chalmers Manufacturing Co.,* 388 U.S. 175, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967). "It would seem self-evident that the interpretation of a union's own constitution represents virtually the ultimate in internal affairs, and the impropriety of permitting critical examination, by . . . outsiders must be considered offensive." *NLRB v. Electra-Food Machinery, Inc.* 621 F.2d 956, 958 (9th Cir. 1980). As such, absent bad faith or special circumstances, an interpretation of a union constitution by union officials, as well as interpretations of the union's rules and regulations, should not be disturbed by the court. *Monzillo v. Biller,* 735 F.2d 1456, 1458 (D.C. Cir. 1984); *Busch v. Givens,* 627 F.2d 978, 981 (9th Cir. 1980); *Stelling v. International Brotherhood of Electrical Workers, Local 1547,* 587 F.2d 1379, 1388-89 (9th Cir. 1978), *cert. denied,* 442 U.S. 944, 99 S.Ct. 2890, 61 L.Ed.2d 315 (1979); *Vestal v. Hoffa,* 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied,* 406 U.S. 934, 92 S.Ct. 1768 32 L.Ed.2d 135 (1972).

The authority of the delegates to the Convention to pass, and later rescind, Resolution 51 was provided in Article Two, § 2 of the IATSE Constitution:

> The supreme governmental powers of this Alliance and of its constituent members shall be vested in its duly elected delegates in Convention assembled and when the Convention is not in session, in the International Officers duly elected by the delegates or appointed in accordance with the laws herein provided.

After rescinding Resolution 51, the delegates voted to return all questions of jurisdiction in the videotape field to the International Union. Pursuant to this order, the International President had the authority to determine in which local union technical directions belonged.

In addition, the International President acted pursuant to the powers granted him by the IATSE Constitution. Article Seven, § 6 gives the President the power to interpret "the laws of this Alliance as contained in this Constitution and By-Laws" and states that his decisions shall be binding on all members and local unions. That same provision also states that the President "shall render decisions upon questions of law where the Constitution and By-Laws contain no express provision for the determination thereof." Furthermore, Article Seven, § 14 gives to the President:

> those duties usually devolving upon the International President or executive officer of similar voluntary organizations and his authority shall be that ordinarily conferred upon similar officers having broad executive powers and in construing this section it is the desire of this Alliance to insist upon a construction which will support the actions of the International President in carrying out the expressed purposes of the Alliance . . . , and the International President shall have . . . the power to issue such rules, regulations, orders, or mandates as he may deem necessary or advisable in the conduct of his said office.

Moreover, Article Nineteen, § 21 vests the final resolution of jurisdictional disputes between local unions in the International President:

> If any affiliated Local Union shall have a grievance against another affiliated Local Union, or if there

> shall be a disagreement between Local Unions respecting their respective jurisdiction, membership or policies, such grievances or disputes shall be referred by the Local Unions to the International President for his decision and his decision shall be binding upon the Local Unions involved.

The plain language of the IATSE Constitution authorized the actions taken by the delegates at the conventions, the Board, and the International President. Their actions were neither unfair nor unreasonable.

CONCLUSION

Absent a specific limitation in a union constitution, this court will not interfere with the efforts of a union's leaders to manage the affairs of their organization. A division of jurisdiction among local unions is one such area into which this court declines to interfere. Disputes between an international and its locals, or disputes between locals, are best left for internal settlement.

A written agreement between local unions, even if subsequently ratified by the international, cannot establish a permanent, immutable allocation of jurisdiction among the locals or foreclose other locals from asserting a claim to such work. In view of the broad powers ordinarily given internationals under their constitutions and bylaws, we conclude that such agreements are subject to revision, review or cancellation by the international, so long as that body follows the procedures prescribed in its charter.

Accordingly, the district court's grant of summary judgment is

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION PICTURE & VIDEOTAPE EDITORS GUILD, LOCAL 776, I.A.T.S.E., and INTERNATIONAL PHOTOGRAPHERS GUILD, LOCAL 659,

Plaintiffs/Counter-Defendants/Appellees,

v.

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS AND TELEVISION ENGINEERS OF THE MOTION PICTURE AND TELEVISION INDUSTRIES, LOCAL 695 ("LOCAL 695"),

Defendants/Counter-Claimants/Appellants.

ORDER

No. 85-6559
D.C. No. CV 84-3120-AHS

Before: ANDERSON, PREGERSON, and REINHARDT, Circuit Judges.

Filed: Dec. 29, 1986

The opinion filed September 26, 1986 is amended by adding a new footnote at 800 F.2d at 975, second column, at the end of the first paragraph, as follows:

> "We do not intend to suggest by our discussion in the text that the district court did not have jurisdiction over the suit as an initial matter. *See United Ass'n of Journeymen of Plumbing Industry, AFL-CIO v. Local 334,* 452 U.S. 615, 627 (1981) (holding that § 301 grants the federal courts jurisdiction over disputes between locals and internationals regarding

union constitutions, but leaving open question of 'the substantive law to apply')."

With this amendment, the petition for rehearing is DENIED.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOTION PICTURE & VIDEOTAPE EDITORS GUILD,
LOCAL 776, I.A.T.S.E.,
Plaintiff,

v.

INTERNATIONAL SOUND TECHNICIANS,
CINETECHNICIANS AND TELEVISION ENGINEERS OF THE
MOTION PICTURE AND TELEVISION INDUSTRIES,
LOCAL 695,
Defendant.

AND RELATED COUNTERCLAIM

ORDER GRANTING SUMMARY JUDGMENT ON COUNTERCLAIM

Case No. CV 84-3120-AHS

Filed: Sept. 3, 1985

On May 22, 1985, counterdefendants (1) International Alliance of Theatrical Stage Employees ("IATSE"), (2) Motion Picture & Videotape Editors Guild, Local 776, I.A.T.S.E. ("Local 776"), and (3) International Photographers Guild, Local 659 ("Local 659"), moved under Rule 12(b)(6), Fed.R.Civ.P., to dismiss the second amended counterclaim of defendant and counterclaimant International Sound Technicians, Cinetechnicians and Television Engineers of the Motion Picture and Television Industries, Local 695 ("Local 695"). The Second Amended Counterclaim is deemed corrected so as to attach Exhibit A, the 1973 agreement. After reviewing the

points and authorities declarations and other evidence submitted both in support of and in opposition to the motions, the Court on June 20, 1985 submitted the matter for decision without oral argument. The Court now issues this memorandum of decision and grants summary judgment in favor of moving counterdefendants.

FACTS

This counterclaim arises out of an intraunion dispute between two local chapters of the IATSE. No material facts remain in substantial controversy.

In October, 1973, Local 695 and defendant Local 659 entered into a written jurisdiction agreement (the "Agreement") recognizing that a person working as a "Technical Director" belonged within Local 695 and one working as a "Video Controller" belonged in Local 659. Second Amended Counterclaim, ¶ 9. On October 4, 1973, the Agreement was approved and signed by Richard Walsh, the International President of IATSE. It was approved that same month by the General Executive Board and ratified by the International Convention of IATSE.

Since January 13, 1981, the International President has enforced the jurisdiction of the Locals such that persons performing the function of videotape technicians are permitted to be members of Local 659 and Local 776. He has refused Local 695's request that these workers be brought within the jurisdiction of Local 695. In March, 1983, the General Executive Board nullified the rights of Local 695 arising out of the Agreement.

In late 1983 and early 1984, the Los Angeles Employment Training Panel Center, under the auspices of various local and state groups (see Complaint at ¶ 4),

developed a program to retrain motion picture film editors to operate videotape editing machines. The program was to provide retraining for 300 individuals, most of whom were members of Local 776.

In January, 1984, Local 695 represented to various of the parties responsible for the retraining program that: (1) the job of videotape editor belonged to Local 695 and not to Local 776; (2) the Employment Training Center was precluded from using taxpayer funds to establish the program because other funds held by Contract Services Administration Trust Fund were required to be so used; and (3) no videotape jobs were available unless members of Local 695 were replaced. Complaint at ¶ 5. Allegedly in response to these representations, "the parties in charge of recommending and approving the training program would not take final action." Complaint at ¶ 6. They indicated, however, that the program would be reassessed if the jurisdictional dispute among the Locals were to be resolved. *Id.*

At the meeting of the General Executive Board on January 30, 1984, Local 695 attempted to appeal the Board's decision with regard to the 1973 Agreement. The Board, relying on the IATSE Constitution and By-Laws (the "Constitution"), concluded that it was not the proper recipient of such an appeal and rejected it. See IATSE Constitution, Art. 17 § 1 (Exh. B to Decl. of Jesus E. Quinonez, filed with Local 776's Motion to Dismiss). The Board reminded Local 695 that appeal of the Board's decision would be effected through written petition to the International Alliance in Convention, and considered at the next meeting. *Id.* §§ 1-5.

Local 695 filed no such written appeal to the Alliance in Convention. Instead, Local 695 sent representative James Osburn to attend the Convention. On July 17, 1984,

Osburn protested from the floor that jurisdiction under the Agreement had been undone. This act, he contended, was performed without the consent of the parties to the Agreement, in contravention of a long-standing IATSE practice of obtaining consent of all parties before altering Local jurisdiction. Walter Diehl, the International President, merely noted Osburn's remarks.

On July 18, Osburn protested again the actions of the Executive Board. This time, President Diehl recognized a "motion made to reject [the] report of the General Executive Board." He called for a vote; the Alliance voted in the negative. Exh. C-3 to Decl. of Timothy J. Sargent in Support of Opposition to Motions at p. 17.

Meanwhile, on May 1, 1984, Local 776 filed a complaint against Local 695 alleging a breach of contract, interference with prospective business advantage, and libel and/or slander. Local 695 responded by filing a counterclaim, which it amended on February 11, 1985. On April 8, 1985, the Court heard and granted counterdefendant Local 659's motion to dismiss the first amended counterclaim. The Court granted Local 695 leave to file an amended pleading, and, on April 29, 1985, Local 695 filed its Second Amended Counterclaim. In its present form, the counterclaim sets forth claims against IATSE, Local 659, Local 776, and Contract Services Administrative Trust Fund ("CSATF") for (1) declaratory relief, (2) breach of contract, (3) breach of the duty of fair representation, (4) tortious interference with contract, (5) inducing breaches of contract, (6) tortious interference with prospective business advantage, (7) breach of fiduciary duty, and (8) injunctive relief.

On May 22, 1985, counterdefendants Local 776, Local 659, and IATSE all moved to dismiss the Second Amended Counterclaim without leave to amend.

DISCUSSION

Counterdefendants raise three arguments in support of their motion to dismiss. First, they argue that the action must be dismissed for Local 695's failure to exhaust the internal union remedies provided in the IATSE Constitution. Second, they contend that the counterclaim based on the 1973 Agreement is time-barred on either a breach of contract or duty of fair representation theory. Finally, they argue that the jurisdictional determination in dispute is within the discretion of the relevant IATSE bodies, and that this Court lacks the power to disturb that determination. Because the Court finds the first of these arguments dispositive, this memorandum will include a discussion of that argument alone.

1. SUMMARY JUDGMENT UNDER RULE 12, FED.R.CIV.P.

A preliminary issue is the nature of the Court's treatment of these motions. Although they have styled these motions as motions to dismiss, counterdefendants have submitted declarations and other evidence outside the pleadings of this case for the Court's consideration. Local 695, too, has submitted evidence in support of its position and has, in fact, noted that the Court might treat this motion as one for summary adjudication. Memorandum in Opposition at 10; See Rule 12(b).

A motion brought pursuant to Rule 12(b)(6), Fed.R.Civ.P., may be treated as a motion for summary judgment "if matters outside the pleadings are presented to and not excluded by the Court." The Court, however, must assure itself that all parties have sufficient notice that the motion will be so treated and, accordingly, have sufficient opportunity to respond fairly with evidence it wishes considered. *Mayer v. Wedgewood Neighborhood*

Coalition, 707 F.2d 1020, 1021 (9th Cir. 1983). Here, both parties have submitted matters outside the pleadings. Local 695, against whom judgment is sought, has submitted the evidence it wishes considered in opposition to the motion, and has explicitly indicated that such submission was in anticipation of the Court's treating these motions as motions brought under Rule 56, Fed.R.Civ.P. The Court's application of this provision of Rule 12(b) is thus proper, since all sides have been "fairly apprise[d] that the court would look behind the pleadings." *Portland Retail Druggists Association v. Kaiser Foundation Health Plan,* 562 F.2d 641, 645 (9th Cir. 1981).

2. EXHAUSTION

In response to counterdefendants' contentions that the counterclaims should be dismissed for failure to exhaust internal union remedies, Local 695 argues both that it has exhausted those remedies and that, in any event, it was not required to exhaust because any such attempt would have been futile. Neither of these arguments is persuasive.

a. Exercise of Internal Union Procedures

The Constitution of the IATSE, which governs the various interrelationship of the IATSE locals and their members, provides specific, detailed procedures that a local union aggrieved by any IATSE action must follow before resorting to the civil courts. IATSE Const., Art. 17, § 7. Any disagreement is first determined by the International President. *Id.,* Art. 19, § 21. From there, either local may appeal the President's decision to the General Executive Board of the IATSE. *Id.,* Art. 11, § 5; Art. 17, § 1. Finally, either local may appeal the decision of the General Executive Board to the "Alliance in Convention assembled, and the latter body shall be the tribu-

nal of ultimate judgment." *Id.* All appeals in this procedure are cognizable only if filed in writing, and within thirty days after the challenged decision. *Id.*, Art. 17, §§ 2, 3.

Here, the facts are undisputed that Local 695 has not pursued these internal procedures to their end. In March, 1983, the General Executive Board ruled against Local 695 on their contention that the President's jurisdictional determination with regard to videotape editor work was in violation of the Agreement. On January 30, 1984, Local 695 attempted to appeal the Board ruling at a meeting of the General Executive Board. The Board refused to hear the matter, saying that the appeal was barred by the passing of more than thirty days from the ruling, and that, in any event, the proper recourse from a Board ruling was to the International Alliance in Convention. Letter of January 31, 1984 from James J. Riley to James A. Osburn, Exh. A to Decl. of Larry C. Drapkin.

At the next Convention, Local 695 attempted to raise the Board ruling. However, it did not attempt to file any written appeal, nor was the attempt made within thirty days of either the March, 1983 decision or the Board's January, 1984 rejection of appeal. Instead, it attempted to raise the issue from the floor of the Convention.

Local 695 does not explain its failure to implement the procedures clearly outlined in the Constitution. Nor does it show persuasively that the energies expended in raising the jurisdictional issue should be regarded as a substitute for compliance. Thus it cannot be said that Local 695 exhausted its internal remedies before bringing this counterclaim.

b. Should Exhaustion be Required?

Federal labor policy favors non-judicial resolution of disputes, and parties with intra-union disputes are encouraged to exhaust internal union procedures before bringing an action in federal court. *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America*, 391 U.S. 418 (1968). The decision whether to require exhaustion is entrusted to the sound discretion of the court. *Id.*; *Bise v. International Brotherhood of Electrical Workers*, 618 F.2d 1299, 1303 (9th Cir. 1979). In exercising this discretion, the court must look generally to "the reasonableness of such requirements in terms of the facts and circumstances of a particular case." *Marine Workers*, 391 U.S. at 428.

The policy of requiring exhaustion is rooted "in the desire to stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures." *Detroy v. American Guild of Variety Artists*, 286 F.2d 75, 78 (2d Cir. 1961), *cert. denied*, 366 U.S. 929. Consequently, exhaustion of intra-union remedies before judicial intervention is "most absolute" where, as here, "the complaints allege wrongdoing regarding internal union affairs." *Bise*, 618 F.2d at 1303, *quoting Chambers v. Local Union No. 639*, 188 U.S.App.D.C. 133, 142, 578 F.2d 375, 384 (D.C. Cir. 1978). The policy also allows the conservation of judicial resources by mooting complaints before they reach the judicial process. Finally, union tribunals presumably possess special competence in dealing with these matters, and the courts may glean valuable guidance in the prior consideration of the issues by appellate union tribunals. *Detroy*, 286 F.2d at 79.

In furtherence of these ends, exhaustion will be required "in the absence of a showing that it would be futile or that the remedies are inadequate." *Buzzard v. Local*

Lodge 1040 International Ass'n of Machinists and Aerospace Workers, 480 F.2d 35 (9th Cir. 1973), *quoting Frederickson v. System Fed. No. 114 of Railway Emp. Dept.*, 436 F.2d 764 (9th Cir. 1970). Local 695 has not shown either. First, it has not shown that its remedies were vitiated by union hostility, arbitrariness, or bad faith. Although it asserts that the International President was hostile to its claims, Local 695 ignores the fact that its remedy from an adverse decision by the President was an appeal to the General Executive Board and the Convention. The availability of these further, binding procedures renders irrelevant the alleged hostility on the part of the President. See, *e.g., Monroe v. International Union, UAW*, 723 F.2d 22, 25 (6th Cir. 1983); *Winter v. Local Union No. 639, etc.*, 569 F.2d 146, 149-150 (D.C. Cir. 1977).

Second, Local 695 has not shown sufficiently that the internal union remedies are inadequate to redress its grievance. Local 695 notes that the Constitution makes no provision for money damages, and argues that its remedy within the ambit of the Constitution would have been inadequate. However, the essence of Local 695's grievance involved the 1973 Agreement and its effect on the jurisdictional claims of Locals 695, 659, and 776. Internal resolution of disputes of this nature clearly is contemplated by the IATSE Constitution. Were a party able to circumvent the exhaustion requirement by the mere expedient of creating a requested remedy not specified within the union Constitution the exhaustion requirement would be rendered a nullity. Sound judicial policy dictates that exhaustion be shown in this matter; no reason given justifies waiver of that requirement.

CONCLUSION

Counterdefendants' motion for summary judgment on Local 695's second amended counterclaim is granted.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on counsel for all parties in this action.

Dated: September 3, 1985

ALICEMARIE H. STOTLER

ALICEMARIE H. STOTLER
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOTION PICTURE & VIDEOTAPE EDITORS GUILD,
LOCAL 776, I.A.T.S.E.,
Plaintiff,
v.
INTERNATIONAL SOUND TECHNICIANS,
CINETECHNICIANS AND TELEVISION ENGINEERS OF THE
MOTION PICTURE AND TELEVISION INDUSTRIES,
LOCAL 695,
Defendant.

AND RELATED COUNTERCLAIM

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT

Case No. CV 84-3120 AHS

Filed: Nov. 5, 1985

Upon a motion brought by counterdefendants (1) International Alliance of Theatrical Stage Employees ("IATSE"), (2) Motion Picture & Videotape Editors Guild, Local 776, I.A.T.S.E. ("Local 776"), and (3) International Photographers Guild, Local 659 ("Local 659"), this Court on September 5, 1985, filed an Order Granting Summary Judgment on the Second Amended Counterclaim of defendant and counterclaimant International Sound Technicians, Cinetechnicians and Television Engineers of the Motion Picture Industry, Local 695 ("Local 695"). Local 695 filed on September 18, 1985 a Motion for Reconsideration of that Order. The motion for

reconsideration was originally scheduled for hearing on the Court's November 4, 1985 calendar, but was submitted for hearing without oral argument by Order of the Court dated October 29, 1985. By this Order, and for the reasons set forth below, the Court denies Local 695's motion for reconsideration and denies its request for judicial notice.

DISCUSSION

Under Rule 7.16 of the Local Rules of this Court, a party may move for reconsideration of the decision on any motion only on the grounds of (a) newly discovered material facts or a material change in law, (b) the emergence of new material facts or a change of law subsequent to decision, or (c) "a manifest showing of a failure to consider material facts presented to the Court before such decision." No motion for reconsideration "shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." *Id.*

Local 695 brings this motion under part (c) of Local Rule 7.16, contending that the Court failed to consider (1) the position in which Local 695 found itself in November 1983 as a result of a ruling in a related matter, (2) that exhaustion of internal remedies would have required an "undue length of time," and (3) that the internal remedies could not have provided adequate relief. This argument is without merit: the Court considered every one of the proffered elements in reaching its decision and concluded that they did not alter the result.

1. "SIGNIFICANCE OF PRIOR LITIGATION"

Local 695 asserts that the Court failed to consider the significance of prior litigation in the chain of events preceding the filing of this action:

> It is true that the General Executive Board made a challenged ruling in March, 1983. It is also true that there was no further internal union activity by 695 until January 30, 1984. What is missing from the Court's reasoning, however, is the pendency of the prior action before Judge [Richard] Gadbois. . . .
>
> Local 695 was urging in the District Court case which had been assigned to Judge Gadbois that exhaustion was not required. . . .
>
> It would have been an act inconsistent with the pending lawsuit for Local 695 to have filed an appeal from the March '83 decision while the prior case was pending. To have filed such an appeal would have nullified the lawsuit. Local 695 urges that while its lawsuit was pending, it was not required to appeal the ruling of the March '83 Executive Board.
>
> The Opposition papers have pointed out, but this Court's opinion does not reflect, that on November 4, 1983, Judge Gadbois granted summary judgment against Local 695's claim "without prejudice" because of failure to pursue administrative remedies. The Judge noted that the court lacks unique expertise in this area and concluded: "In dismissing this action, however, the court emphasizes its expectation that the Union [IATSE] will deal with the matter in an impartial and democratic manner."

Motion for Reconsideration, pp. 3-5. When Local 695 representative James Osburn presented Local 695's grievance to the next Executive Board meeting, the Board

ruled that the appeal was untimely. See Order Granting Summary Judgment, p. 7, l. 25.

As the Court has implicitly ruled, there is no reason to believe that Judge Gadbois' November 4, 1983 Order was to be construed as a mandate to any of the Union's governing bodies that they grant Local 695 the relief it sought. Indeed, even after the Executive Board rejected its appeal, Local 695 did not pursue its remedies through the final stages of the Union's administrative procedures. See Order Granting Summary Judgment, pp. 3-4.

2. UNDUE LENGTH OF TIME

Local 695, relying on the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 et seq., argues that the Court refused to consider the "fact" that Local 695 was not required to exhaust internal remedies because exhaustion would have taken in excess of four months.

Local 695 cites no cases in which the "four month rule" was applied to excuse exhaustion of remedies in a grievance between a member organization and its parent international union. The rule cited is limited to actions between an individual member and his or her labor organization. In any case, any delay that might have been engendered by Local 695's attempt to exploit internal procedures is more than outweighed by the beneficial effects attendant upon exhaustion of those remedies prior to an action in federal court. Order Granting Summary Judgment, p. 9 (and cases cited therein).

3. ADEQUACY OF INTERNAL REMEDIES

Local 695 contends finally that the Court neglected to consider the "fact" that

> [n]either the Executive Board nor the Convention can accomplish the result Local 695 seeks: that is, validating the 1973 Jurisdictional Agreement. The Executive Board and the Convention are impotent of accomplishing that end. If Local 695 seeks validation of the 1973 Agreement, it has nowhere to turn but to this Court.

Motion for Reconsideration, p. 8.

The Court considered that very argument and concluded that there was no showing that the remedies provided by internal procedures were inadequate. Order Granting Summary Judgment, p. 10. Indeed, the administrative procedures outlined in the I.A.T.S.E. Constitution and By-Laws appear to contemplate action on grievances precisely like that raised by Local 695 in this case. See I.A.T.S.E. Constitution and By-Laws, Exh. A to Declaration of Jesus E. Quinonez (filed with Local 659's Motion to Dismiss Defendant's Second Amended Counterclaim), Art. 17, § 1.

CONCLUSION

Defendant and counterclaimant's motion for reconsideration of the Court's September 3, 1985 Order Granting Summary Judgment on Counterclaim is denied.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on counsel for all parties in this action.

Dated: November 5, 1985.

ALICEMARIE H. STOTLER

ALICEMARIE H. STOTLER
United States District Judge

APPENDIX E

VIDEOTAPE AGREEMENT

Between

LOCAL 695 and LOCAL 659

In accordance with and to implement the action of the 51st Convention of the Alliance, meeting in Milwaukee, Wisconsin the week of July 31 to August 4, 1972, which upheld a determination of the General Exchange Executive Board made at a meeting in Hollywood, California the week of May 15–19, 1972 that jurisdiction over videotape operations be continued in the International, that the International negotiate and enter into collective bargaining contracts to cover such work and that in administering such jurisdiction, the International preserve, wherever possible, the established jurisdictional lines of the craft unions and give first opportunity to those locals to fill jobs whose members have the primary skills to perform the required functions, IATSE Local 695 and IATSE Local 659 mutually agree to resolve questions between them in the videotape field as follows:

1. Camera Local 659 recognizes the claim of Sound Technicians Local 695 to the audio job functions and also those job functions of Technical Director, Maintenance and Engineering Technicians, Videotape Recording Technicians, and/or combinations of these job functions, which inherently, by custom and practice, are classified as those job functions in the Technical Unit, with the exception of the Video Controller.

2. Sound Technicians Local 695 recognizes the claim of Camera Local 659 to the job functions of

Director of Photography "E", Television Camera Operator, Video Controller, Still Photographer, and/or combinations of those basic functions.

3. Both Local 659 and Local 695 have resolved the issue of utility persons as follows (subject to applicable collective bargaining contracts with employers and prevailing practices in the industry). If the utility person is assigned to handle lines, connected to camera, the person so assigned will be a member of Local 659.

If audio or engineering lines, the person so assigned shall be a member of Local 695.

4. With regard to KTLA, it is mutually agreed that, in the Engineering area, those men classified as TD or VC would be given a reasonable time (to be agreed upon) to join or transfer to the respective Local, above designated, with a normal transfer fee in the case of a transfer and by waiving of the Initiation Fee by said Locals to cover men now in such classifications. The Local accepting admission to membership of personnel for a period of one year from the date of this Agreement shall waive Initiation Fees in respective corresponding classifications.

5. The intent of the parties to this Agreement, is to resolve all problems relevant to the growth of videotape operations.

Therefore, Local 659, henceforth will not take into membership those persons who perform work functions specified in #1.

Local 695, henceforth, will not take into membership those persons performing work functions as specified in #2.

All Video Controllers, now covered by this Agreement, and members of Local 695 shall be given the opportunity by Local 659 to become members of Local 659.

All Technical Directors now covered by this Agreement and members of Local 659 shall be given the opportunity by Local 695 to become members of Local 695.

6. Both Locals agree that at the companies known as Vidtronics and KCET they will attempt to resolve the pending issue according to the previously stated conditions of this Agreement.

7. With regard to companies not listed and/or outlined above it is mutually agreed that Local 695 and Local 659 shall abide by this Agreement as outlined and spelled out in the above provisions. Further, both Locals shall agree to resolve any issue as to any companies that are organized in the future along the lines set forth herein.

Both Locals, in working out this Agreement, believe they have fully complied with the action of the 51st Convention.

Therefore, both Local 659 and Local 695, shall, in the future, work together, as per the request of the International President, that Locals resolve between themselves, their differences.

Local 659 and Local 695, to properly represent all their members, both film and tape, pledge themselves to support each other and work together, closely, in all production areas, including feature films, commercials, industrials, documentaries and work functions in television stations, to better advance the Union movement of the International Alliance and the Local Unions.

THEREFORE, both Local 659 and Local 695, in the belief they have fulfilled the wishes of President Walsh and the International, respectfully, ask of the International Executive Board that the Board signify its concurrence with this Agreement. Upon such concurrence being given, this Agreement shall continue in full force and effect unless rescinded or modified by mutual consent of both Local 695 and Local 659 with the consent and approval of the General Executive Board.

JOHN L. COFFEY

John L. Coffey for Local 695

GERALD K. SMITH

Gerald K. Smith for Local 659

APPROVED: Oct. 4th 1973

General Executive Board of
the IATSE & MPMO of US & C
this day of October, 1973 at
Memphis, Tennessee

Richard F. Walsh
I.A. President

APPENDIX F

UNITED STATED DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS and TELEVISION ENGINEERS OF THE MOTION PICTURE AND TELEVISION INDUSTRIES, LOCAL 695,
Plaintiff,

VS.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA,
Defendant.

MOTION PICTURE & VIDEOTAPE EDITORS GUILD, LOCAL 776, IATSE,
Intervenor.

DECLARATION OF EMORY M. COHEN

Case No. 82 3500 RG (Kx)

Bodkin, McCarthy, Sargent & Smith, Lawyers, Fifty-First Floor, 707 Wilshire Boulevard, Los Angeles, California 90017, Telephone: (213) 620-1000. Attorneys for Plaintiff.

Emory M. Cohen declares and states that:

1. I have been employed in the videotape and film industries in the "Hollywood" area for 20 years. I began my career with Glen Glenn Sound in 1962. At that time, a sister company of Glen Glenn, Glenn-Armisted was pioneering independent videotape production. In my capacities as vice president of Glen Glenn Sound, president of

Image Transform, Inc., president of Compact Video Services, Inc., and my current position, I have seen the development of modern film and videotape production technique and technology. Based on such experience, I am personally, intimately familiar with the staffing and training practices of film and videotape productions and of the ways and the reasons in which these have evolved.

2. I recently had a conversation with Osburn which prompted me to contact counsel for local 695 to express my grave concern. This declaration is a product of that concern, is based upon a letter that I wrote to Mr. Sargent, and accurately sets forth my opinions and reasons for said opinions concerning the subject matter before this court. I understand that there is a possibility that some sort of ruling by International Alliance president, Walter Diehl, or an interpretation of such ruling might require companies signatory to IATSE agreements to obtain Technical Directors through the Editor's Guild. I am unalterably opposed to this move for the reasons set forth hereinbelow.

3. At present, the chief benefit of working with an I.A. videotape contract (as opposed to an I.A. film contract) arises from the interchangability of the production crew permitted under the Videotape Agreement. I understand that the concept of interchangability has been explained to the court in other declarations. Any action which tends to move videotape hiring and operating practices toward the rigid film-style jurisdictional divisions long a fixture in the film industry will have a seriously negative effect on the ability of companies with I.A. contracts to compete for work.

4. The method by which Technical Directors are trained requires exposure and experience which can only be obtained through on-production jobs, not post-produc-

tion and certainly no film post-production jobs. The assumption that the Technical Director is performing on videotape productions the same function that an editor performs in post-production, can only be held by the casual observer who is ignorant of either process. The Technical Director has an overriding responsibility on production which is not required in the controlled environment of the editing room. Each of the technicians staffing the set of a videotape production is responsible for the proper operation of his assigned equipment. The Technical Director, however, has the additional responsibility of understanding and directing the equipment as a totality rather than as pieces. He is the interface between the creative talents of the producer and director on the one hand and the hard reality of the technical equipment on the other.

5. The technical background required to fulfill this responsibility is almost always gained by working up through the technical ranks from utility person or cable puller, to tape machine operator to video operator and, eventually, to technical director. This process is the way the videotape business has worked for two decades and it has worked efficiently. Any attempts to change this for political reasons while ignoring the realities of the situation is designed to fail and the price of failure will be high, both to employees and employers.

6. Interchangability is more than an economic requirement in videotape production, it is a technical necessity. Interchangability of the crew members has no value or meaning unless all of the members have the knowledge and training to be interchanged. Editors do not work in production; not film production, not videotape production.

7. The technique and technology in videotape and film productions have evolved on different lines for valid

reasons peculiar to the separate industries. Both industries have practices which work. The equipment used in videotape production, however, is not designed in accordance with Hollywood Union jurisdictions in mind. It is designed to perform very complex and sophisticated functions. To operate this equipment requires a technical background, experience and training which is seldom if ever required in film production. The equipment does not care about internal union politics.

8. At present, the sophistication and complexity of videotape equipment is expanding at an exponential rate. Any action which would tend to lower the technical proficiency of the Technical Director, at a time when the complexity of the equipment is such a dramatic state of flux, cannot be tolerated by the Producer. The Producer will not pay for additional staff to cover for the inadequate knowledge of crew members as a consequence of any union jurisdictional squabble which is blind to reality. If jurisdictional rules are established which increase costs of working with IATSE crews or companies, the result will be obvious: the work will go to non-IASTE crews and companies. Jobs will be lost and companies will be lost.

9. At a time when nearly all of the IATSE signatory videotape companies are facing economic difficulty, difficulties which have led to bankruptcy fo a few, I can scarcely believe that this counterproductive issue is even being seriously considered.

I have read the foregoing and declare under penalty of perjury that it is true and correct. If called as a witness, I could competently testify to the facts, opinions and conclusions set forth above.

Executed at Los Angeles, California, this 13th day of October, 1983.

EMORY M. COHEN

EMORY M. COHEN

Supplemental Proof of Service by Mail
For Petition for Writ of Certiorari
Filed on April 28, 1987

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On May 8, 1987, I served the within Petition for a Writ of Certiorari in re: "International Sound Technicians vs. Motion Picture" in the United States Supreme Court, October Term 1986, No. .....;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Leo Geffner, Esq.
Geffner & Saltzman
3055 Wilshire Boulevard, Suite 900
Los Angeles, California 90010

Norman J. Watkins, Esq.
Lynberg & Nelson
888 South Figueroa Street, 16th Floor
Los Angeles, California 90017-2516

Jay D. Roth, Esq.
Jesus E. Quinonez, Esq.
617 South Olive Street, Suite 1100
Los Angeles, California 90014

All Parties Required to be served have been served,

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on May 8, 1987, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA